

The Honorable Richard A. Jones

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

ABDIQAFAR WAGAFE, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, President of the United
States, *et al.*,

Defendants.

No. 2:17-cv-00094-RAJ

**RESPONSE TO PLAINTIFFS' MOTION
TO SEAL EXHIBITS TO THE
DECLARATION OF CRISTINA SEPE IN
SUPPORT OF PLAINTIFFS' MOTION
TO COMPEL A-FILE INFORMATION**

Defendants do not oppose Plaintiffs' Motion to Seal and ask the Court to grant it. *See* Dkt. 315.

LEGAL STANDARD

The strong presumption of public access to court records ordinarily requires the moving party to provide compelling reasons to seal a document. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). But, the less onerous "good cause" standard applies to "sealed materials attached to a discovery motion unrelated to the merits of a case." *Ctr. for Auto Safety, v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016). Here, the good cause standard applies because the sealed materials are related to Plaintiffs' Motion to

Compel A-File information, Dkt. 316, which is a non-dispositive discovery-related motion. *See Ctr. for Auto Safety*, 809 F.3d at 1097.

Under this Court's Local Rules, a motion to seal a document must include the following:

- (A) a certification that the party has met and conferred with all other parties in an attempt to reach agreement on the need to file the document under seal, to minimize the amount of material filed under seal, and to explore redaction and other alternatives to filing under seal; this certification must list the date, manner, and participants of the conference;
- (B) a specific statement of the applicable legal standard and the reasons for keeping a document under seal, including an explanation of:
 - i. the legitimate private or public interests that warrant the relief sought;
 - ii. the injury that will result if the relief sought is not granted; and
 - iii. why a less restrictive alternative to the relief sought is not sufficient.

LCR 5(g)(3). Furthermore, where the parties have entered a stipulated protective order governing the exchange in discovery of documents that a party deems confidential, a party wishing to file a confidential document it obtained from another party in discovery may file a motion to seal but need not satisfy subpart (3)(B) above. *Id.* Instead, the party who designated the document confidential must satisfy subpart (3)(B) in its response to the motion to seal or in a stipulated motion. *Id.*

ARGUMENT

Here, Exhibits C, D, E, and F were produced by Defendants in discovery subject to an Attorney-Eyes-Only restriction, as ordered by the Court on July 9, 2019. Dkt. 274 at 6; Dkt. 318. These four Exhibits satisfy the requirements of Local Rule 5(g)(3)(B) and hence should remain filed under seal. These Exhibits are excerpts from the Named Plaintiffs' A-files, and they contain personal identifying information, the results of privileged law enforcement checks on the Named Plaintiffs, as well as privileged records of communications between USCIS and third party law enforcement agencies. *See* Dkt. 318. Additionally, the documents contain sensitive

but unclassified information about investigative techniques used by USCIS and other law enforcement officers to maintain the integrity of the legal immigration system and combat fraud, criminal activity, and other threats to public safety and national security. This includes how officers conduct the vetting of benefit applicants, the types of databases and sources officers consult in the course of vetting, and the names of officers involved in particular cases. As this Court has recognized, public disclosure of these types of information could compromise public safety and national security, such as by prompting nefarious individuals to modify their behavior and thereby avoid detection. Dkt. 320 at 6-7. These documents should remain under seal because USCIS has a legitimate interest in protecting against their release, and public release could cause injury. For these same reasons, there are no less restrictive alternatives than keeping the documents under seal.

Nevertheless, as provided under LCR 5(g)(6), because the Plaintiffs' motion to seal pertains in part to the foregoing four exhibits produced by the Government under a protective order, should the Court deny the motion to seal as to these three documents, Defendants request that "the court withdraw the document[s] from the record rather than unseal [them]." LCR 5(g)(6) (noting that a response to a motion to seal may request this alternative remedy for preserving the status quo).

Dated: January 21, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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